

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Robert Steven Cutler,  
individually and as Administrator  
of the Estate of David A. Cutler,  
deceased, on behalf of himself and  
on behalf of all beneficiaries of  
the Estate of David A. Cutler,  
deceased, and Renee Luddington  
Cutler;;

Plaintiffs,

v.

Mark D. Napier, Sheriff of Pima  
County, Arizona, in his official  
capacity; Rural Metro Fire Dept.,  
Inc., an Arizona for profit  
corporation; Keith Barnes and Jane  
Doe Barnes, his spouse; Grant Reed  
and Brittany Reed,

Defendants.

No.  
CV-18-00383-TUC-FRZ

VIDEOTAPED DEPOSITION OF KRISTEN LEE POWELL

October 11, 2019

Tucson, Arizona

REPORTED BY: BONNIE J. HUMM, RPR  
Arizona CR No. 50722  
COLVILLE & DIPPEL, LLC  
(520) 884-9041  
ArizonaDepos.com  
Arizona RRF No. R1129

1 have been able to see the man on the hill as he drove the  
2 road that takes you to the Gomez residence? He would  
3 have been able to see the man on the hill?

4 **A. Correct. Much like you can see the flag on**  
5 **the other opposite hill, because David was standing up**  
6 **right at the top of the hill.**

7 Q. Exactly. And from where the deputy parked,  
8 based again on your knowledge of the geography and the  
9 terrain there, the deputy would have been able to see  
10 where on top of the hill the man was that turns out to be  
11 David Cutler; the deputy would have been able to see  
12 where David Cutler was on the top of the hill where the  
13 deputy stopped and got out of his vehicle?

14 **A. Yes.**

15 Q. Now I've got to circle back again --

16 **A. Okay.**

17 Q. -- because I haven't -- I don't think we've  
18 exhausted your knowledge and your recollection of the  
19 concerns you expressed to your husband between the time  
20 of the event and before you met with the Cutler  
21 company -- or, excuse me, family.

22 What concerns did you express to him?

23 **A. The same ones that I mentioned in Exhibit 3 to**  
24 **Detective Hogan; that there was not a sense of urgency or**  
25 **rushing or just the lights or a siren, you know,**

1 something that would show me that there was -- or anybody  
2 viewing it that this was an emergency situation.

3 Q. Is that kind of just generally -- I don't know  
4 if you remember the exact words -- but that's generally  
5 the concerns that you expressed to your husband?

6 A. That as well as -- thank you -- as David is  
7 standing on the top. And once the detective -- or, I'm  
8 sorry, an officer and --

9 Q. Deputy.

10 A. Deputy.

11 Q. That's Deputy Barnes?

12 A. Correct. And if I can interrupt and say I did  
13 last night -- I was like, who is this? And I gathered he  
14 wasn't going to be here, because Karen mentioned that  
15 he's relocated, he's retired and is living in Oregon. So  
16 I don't know if I was going to be meeting him today. And  
17 I Googled his name last night, so I saw --

18 Q. Did you find out anything bad about him that I  
19 should know about?

20 A. Well, he was -- actually there was something.  
21 There was another case in Tucson where he was the first  
22 responder to a fire in a garage, and then the man ended  
23 up passing away.

24 Q. Did you --

25 A. I just saw -- and that was last night.

1           **A.       Uh-huh.**

2           **Q.**What was it about the urgency that you  
3           observed that would relate to the ambulance company or  
4           the paramedic or EMT that were on the scene?

5           **A.**Well, again, that day I was viewing it not as  
6           a -- somebody that was close to death. I didn't even  
7           have that as a remote possibility in my mind. So  
8           watching people walk or ascend and, you know, it's not  
9           like, you know, when you see somebody running or trying  
10          to scale something super quick, you know, to get up there  
11          as fast as they can. I didn't see that from -- everybody  
12          was just making their way up for whatever reason.

13          **Q.**All right. So your sense of urgency or lack  
14          of urgency in this case --

15          **A.**Yes.

16          **Q.**-- is that they weren't running up the hill;  
17          is that correct?

18          **A.**Right. That nobody was in a hurry.

19          **Q.**Okay. When you say no one is in a hurry, I  
20          need to understand that a little bit more.

21          **A.**Okay.

22          **Q.**Was it that no one -- when you say hurried, do  
23          you mean like running or jogging?

24          **A.**Well, certainly not running, but, you know,  
25          moving quickly up the hill or -- you know, again I could

1 hear voices. And I don't know how people or emergency --  
2 you know, how they respond in situations, if they would  
3 be calling up, like, Hurry up, we've got to get up here.  
4 You know, he needs fluid, he needs -- you know, something  
5 like that type of, like, verbally that I -- everybody  
6 was -- it was a quiet scene.

7 Q. Okay.

8 A. So that's, I guess, what I'm saying. Verbally  
9 or physically like hustling up.

10 Q. Okay. Hustling up. And that it was quiet?

11 A. It was -- they were -- I couldn't make out  
12 what they were saying, if they were like, you know -- I  
13 don't know. Again, it's my opinion that if it's an  
14 emergency, if somebody -- now that I know -- was like  
15 coding or doing something, you know, that's a different  
16 situation than what I knew was occurring. And I wouldn't  
17 have suspected that that's what was occurring by the  
18 visual picture.

19 Q. Okay. But you weren't privy to any of the  
20 conversations that anyone was having --

21 A. No, sir.

22 Q. -- between the officers --

23 A. No, sir.

24 Q. -- and the paramedics or any of that, right?

25 A. No, sir.

1 whole time. So I just -- I brought out water. I didn't  
2 ask them if they wanted water. I just brought them out  
3 water.

4 MR. ZWILLINGER: I have nothing further.

5 THE VIDEOGRAPHER: The time is 2:09. This  
6 concludes the deposition.

7 (Deposition concluded at 2:09 p.m.)  
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1           D E P O S I T I O N   S I G N A T U R E   P A G E  
2                   IN THE UNITED STATES DISTRICT COURT  
3                   FOR THE DISTRICT OF ARIZONA  
4   Robert Steven Cutler, et al.,           )  
5    Plaintiffs,           )  
6    v.                    ) Case No.  
7   Mark D. Napier, et al.,                ) CV-18-00383-TUC-FRZ  
8    Defendants.           )  
9    \_\_\_\_\_)

10                   DECLARATION UNDER PENALTY OF PERJURY  
11           I declare under penalty of perjury that I have read  
12   the entire transcript of my deposition taken in the  
13   above-captioned matter, or the same has been read to me,  
14   and the same is true and accurate, save and except for  
15   changes and/or corrections, if any, as indicated by me on  
16   the DEPOSITION ERRATA SHEET hereof, with the  
17   understanding that I offer these changes as if still  
18   under oath.

19  
20                   Signed on the date           day of month           , 2019.

21  
22  
23                   \_\_\_\_\_  
24   KRISTEN LEE POWELL  
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